

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10117 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

G S R T C

Versus

SHANABHAI G DHABI

Appearance:

1. Special Civil Application No. 10117 of 1993
MR HS MUNSHAW for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

Gujarat State Road Transport Corporation had preferred the present Special Civil Application Article 227 of the Constitution of India challenging the judgment and award dated 12th April 2003 passed in Reference (LCN) No. 151/87 by the Labour Court, Nadiad.

2. Respondent workman was serving as Conductor with the petitioner Corporation. While he was on duty on 15th August 1993 in a bus enroute to Alindra from Dakor the bus was stopped and checked by Inspecting Party and it was found that tickets issued by him were used again. On the basis of the aforesaid inspection, disciplinary proceedings were initiated against him, a chargesheet was issued against him, and the charges were held to be proved against him, and after giving full particulars a show cause notice was issued upon the respondent by the petitioner Corporation whereby the respondent was called upon to show cause why he should not be dismissed from service and ultimately the respondent was dismissed from the service by order dated 16th August 1985.

3. Being aggrieved by the said order of dismissal the respondent raised an industrial dispute and the dispute was referred to Labour Court, Nadiad, which was numbered as Reference (LCN) No. 151/87. It was contended on behalf of the respondent that there is no evidence on record to prove that he has once recovered the amount of ticket and again reissued the same and there is no evidence to the effect that he has taken any additional amount. He has also submitted that looking to his 10 years long service there is no offence and/or misconduct committed by him. During the course of hearing, the plea with regard to legality and validity of the departmental proceedings was not pressed by him and it was challenged to the extent of finding arrived at by the disciplinary authority. On the other hand it was contended on behalf of the petitioner that looking to the misconduct and irregularity committed by him the order of dismissal is warranted. It was also submitted on behalf of the petitioner that looking to the default card and the punishment imposed by the Corporation in the past, the only order which could be passed was to dismiss the respondent from service. That ultimately the Labour Court accepted the defence of the respondent to the effect that as he was not well on that date some irregularity which can be termed as negligence was committed by him and that he has given assurance that the said mistake will not be committed again and ultimately the Labour Court, Nadiad, by judgment and award dated 12th April 1993 partly allowed the said Reference by directing the petitioner to reinstate the respondent with continuity of service and to pay 50% of the backwages from the date of his termination till reinstatement.

4. Being aggrieved by the aforesaid award of the Labour Court the petitioner Corporation had preferred the Special Civil Application under Article 227 of the Constitution of India.

5. Shri H.S. Munshaw, learned advocate appearing for the petitioner had submitted that the Labour Court has materially erred in interfering with the punishment imposed by the petitioner Corporation. He has also further submitted that the Labour Court has not properly appreciated the fact that in past on 18 occasions the respondent-workman was found involved in various offences for which he was penalised and the Labour Court has not at all considered the default card while modifying the punishment imposed by the Corporation. It was further submitted by Shri Munshaw that though the Labour Court has found that the respondent was irresponsible in his duties and he could be punished, the Labour Court has still awarded reinstatement to the respondent herein with 50% backwages and under the circumstances he requested to quash and set aside the judgment and award passed by the Labour Court, Nadiad.

6. On the other hand, Shri M.H. Rathod, learned advocate appearing on behalf of the respondent-workman had supported the judgment and order passed by the Labour Court, Nadiad. He has submitted that looking to the facts and circumstances of the case and considering the evidence on record and the misconduct committed by the workman the Labour Court found that the punishment imposed by the Corporation dismissing the workman was not in consonance with the misconduct and by not paying 50% backwages the workman is already punished and therefore requested to dismiss the Special Civil Application.

7. I have heard the learned advocates appearing for the parties. I have also gone through the aforesaid judgment and award passed by the Labour Court, Nadiad. The disciplinary authority has found the respondent-workman guilty for the misconduct and the charges levelled against the respondent-workman are proved. The Labour Court has also held that the workman was negligent and irresponsible in his duties. The default card shows that in past on 18 occasions the respondent workmen was found involved in various offences for which he was penalised. Had the Labour Court considered the default card, then it would not have imposed the punishment of only withholding of 50 per cent of the backwages while passing the order of reinstatement. This Court, while admitting the present Special Civil Application, had granted interim relief against backwages only meaning thereby the order of reinstatement was not stayed by this Court and accordingly since 1993 the petitioner is in service as a Conductor. However, looking to the facts and

circumstances of the case and looking to the default card which the Labour Court has not considered, according to me, the punishment, which is imposed by the Labour Court, Nadiad, i.e., withholding of 50 per cent of backwages is not just and proper, particularly when the respondent-workman in the past on 18 occasions was found involved in various offences for which he was penalised. Therefore, looking to the finding given by the Labour Court with regard to holding the respondent-workman negligent, this Court is of the opinion that instead of 50 per cent backwages, only 25% backwages should have been awarded to the respondent workman and a further punishment of withholding of two increments with future effect would serve the interests of justice.

8. In the facts and circumstance of the case, I am of the opinion that modification of the award of the Labour Court, Nadiad to the extent that instead of 50%, award of 25% of the backwages to the respondent-workman and further withholding of two increments with future effect would meet the ends of justice. Accordingly, the judgment and award passed by the Labour Court, Nadiad, dated 12th April 1993 is modified to the effect that instead of 50% of backwages, the respondent workman would be entitled to 25% of the backwages and that a further punishment of withholding of 2 increments with future effect is imposed. Accordingly, the Special Civil Application is partly allowed. The judgment and award passed by the Labour Court, Nadiad, shall stand modified accordingly. The rest of the award of the Labour Court with regard to reinstatement is hereby confirmed. Rule is made absolute to the aforesaid extent with no order as to costs. The petitioner is directed to pay the amount of backwages stated hereinabove within a period of three months from the date of receipt of writ of this order.

[M.R. Shah, J.]

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